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FILED ELECTRONICALLY  
ORIGINAL BY HAND

May 10, 2006

The Honorable Joseph J. Farnan, Jr.  
United States District Court  
844 North King Street  
Wilmington, DE 19801

RE: *LG.Philips LCD Co., Ltd. v. Tatung Company of Amercia, et al.*  
C.A. No. 05-292-JJF

Dear Judge Farnan:

Plaintiff LG.Philips LCD Co., Ltd. ("LPL") writes in response to Defendants' May 5, 2006 letter to the Court. In their May 5 letter, Defendants request that discovery from another proceeding between the parties, namely *Chunghwa Picture Tubes, Ltd. v. LG.Philips LCD Co., Ltd., et al.*, C.A. No. 05-0189 CBM (JTLx) (hereinafter "the '810 case"), be admitted in this case. Specifically, Defendants asked for permission to use "All Financial Data discovery, discovery responses, testimony, documents and things produced or provided in the '810 case, including any such discovery provided by Hewlett-Packard Company, . . . ." Defendants' request seeks to expand the parties' existing stipulation regarding discovery from other proceedings, such as the '810 case. The parties had previously agreed that production made by the parties in any of three other cases may be used as evidence in this case. Defendants' new request was never discussed with LPL's counsel and is overly broad, contrary to this Court's discovery deadlines, and should be denied.

CPT's request is best understood and addressed within the confines of the agreement already reached by the parties, and the Orders already entered by this Court, regarding the use of discovery from other cases. On January 23, 2006, this Court entered a "Stipulation and Order Regarding Discovery Obtained in Other Proceedings" (the "Stipulation"). This Stipulation, which was the product of extensive discussions between the parties, provides that discovery produced *by the parties* in three other pending cases may be used as evidence in this case. Those cases are the '810 case, the Consolidated

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Cases in California,<sup>1</sup> and another case before this Court,<sup>2</sup> all of which involve different patents (collectively hereinafter “the other proceedings”).

In addition, this Court has entered a series of Orders setting the fact discovery deadlines. Under the Joint Rule 16 Scheduling Order, document production was to be completed by February 3, 2006. At a hearing on February 8, 2006, Your Honor extended the fact discovery deadline to February 21 for all discovery and documents, period. The Court had rejected Defendants’ prior attempts to circumvent this deadline by seeking and producing documents after the deadline.

The Stipulation thus already provides that discovery by parties in the ‘810 case (including any “Financial Data discovery, discovery responses, testimony, documents and things produced or provided” by the parties) may be used in this case, subject to the discovery deadlines in this case. Specifically, party discovery in the ‘810 case produced before the February 21 discovery cutoff in this case can be used in this case. With respect to any subsequent discovery, however, the period for discovery has closed. It would be unfair and prejudicial to inject here unlimited and ongoing discovery from the ‘810 case, especially since the parties are on the eve of commencing depositions in this case. LPL objects to Defendants’ latest attempt to circumvent the document deadline in this case.

Further, LPL objects to Defendants’ attempt to expand what discovery they can use from the ‘810 case. Defendants not only seek permission to use discovery from the ‘810 case produced *after* the close of discovery in this case, but also seek permission to use *third party discovery* produced in the ‘810 case, even though it is too late for Defendants to seek such third party discovery in this case.<sup>3</sup> As noted above, Defendants seek permission to use “All Financial Data discovery, discovery responses, testimony, documents and things produced or provided in the ‘810 case, including any such discovery provided by Hewlett-Packard Company, . . . .” Discovery has just begun, however, in the ‘810 case, and LPL and CPT have yet to exchange any “Financial Data discovery.” With respect to “testimony” from the ‘810 case, the first deposition in the ‘810 case isn’t scheduled until May 25, 2006, and it will involve prosecution counsel on

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<sup>1</sup> *LG.Philips LCD Co., Ltd. v. Tatung Co. of America, et al.*, Consolidated Cases CV 02-6775 CBM (JTLx), CV 03-2866 CBM (JTLx), CV 03-2884 CBM (JTLx), CV 03-2885 CBM (JTLx), CV 03-2886 CBM (JTLx) (C.D. Cal.).

<sup>2</sup> *LG.Philips LCD Co., Ltd. v. Tatung Co., et al.*, Case No. CV04-343 (JJF) (D. Del.).

<sup>3</sup> The Stipulation does not allow the use of third party production from the other proceedings, from either before *or* after the close of discovery, hence Defendants request. The Protective Orders in each of the other proceedings provide that information governed by those Orders may only be used in connection with the prosecution or defense of that case, except by “consent of all parties to the case or order of the Court.” Neither Hewlett Packard nor any other third party have consented to the use of their production in this proceeding. Neither has Judge Marshall (for the Consolidated Cases and the ‘810 case) or Your Honor (for the Rearmount case) issued Orders allowing use of third party materials in this case.

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an entirely unrelated patent. With respect to “any such discovery provided by Hewlett-Packard Company,” it is our understanding that CPT has yet to issue a third party subpoena to Hewlett Packard in the ‘810 case. The foregoing demonstrates that, although not clear from the face of Defendants’ letter, the Defendants are asking this Court permission to use ‘810 case production made *after* the close of discovery in this case. Accordingly, for the reasons set forth below, LPL asks that the Court decline Defendants’ requests.

As provided in the Stipulation, “the parties agree[d], in order to promote efficiency and a timely resolution of this case, . . . that the discovery produced in the other pending cases may be used in this case.” Defendants’ request, however, would have the opposite effect. Rather than promoting efficiency and a timely resolution of this case, it will significantly delay and hamper the preparation for depositions (which begin in one week), the preparation of expert reports (which are due in three weeks), and will unnecessarily hamper the preparation of pretrial submissions.

LPL further objects to Defendants’ request for an Order providing that persons receiving confidential information from the ‘810 case be barred from substantive involvement in patent prosecution related to side-mounting of LCD panels. Defendants’ request is not, as they claim, “consistent with the Protective Orders previously entered in this case, as well as the other pending cases between the parties.” It is true that the Protective Order in this case, as well as in the California and Rearmount cases, have limitations on prosecution related activity. In the Protective Order entered in the ‘810 case, however, there is no such restriction.<sup>4</sup> Furthermore, Paragraph 3 of the Stipulation provides that “[t]he discovery from the other pending cases will be governed by a CONFIDENTIALITY STIPULATION AND PROTECTIVE ORDER to be entered in this case that will provide the same confidential treatment as is afforded by the Protective Order entered in the other pending cases . . . .” As there are no restrictions on prosecution related activities in the ‘810 case Protective Order, and the parties have agreed to extend the same protections in this case as are afforded in the case where the documents originated, there is no basis for Defendants to now seek greater restrictions. The parties in the ‘810 case have provided appropriate protection in the Protective Order in that case and there is no basis for Defendants to ask this Court to modify that stipulation.

Respectfully submitted,

/s/ Richard D. Kirk (rk0922)

RDK/slh

cc: Clerk of the Court (by hand)

All counsel as shown on the attached certificate

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<sup>4</sup> See April 26, 2006 Confidentiality Stipulation and Protective Order entered in the ‘810 case, a copy of which is attached as Exhibit A.

# **EXHIBIT A**

SCANNED

1 Teresa M. Corbin (SBN 132360)  
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 18 CHUNGHWA PICTURE TUBES, LTD.

FILED  
 CLERK, U.S. DISTRICT COURT  
 APR 26 2006  
 CENTRAL DISTRICT OF CALIFORNIA  
 BY *[Signature]* DEPUTY

Priority ☒  
 Send ☒  
 Enter ☐  
 Closed ☐  
 JS-5/JS-6 ☐  
 JS-2/JS-3 ☐  
 Scan Only ☐

CLERK, U.S. DISTRICT COURT  
 APR 23 2006  
 CENTRAL DISTRICT OF CALIFORNIA  
 BY *[Signature]* DEPUTY

IN THE UNITED STATES DISTRICT COURT  
 CENTRAL DISTRICT OF CALIFORNIA

16 CHUNGHWA PICTURE TUBES, LTD.,  
 17 Plaintiff,  
 18 v.  
 19 LG ELECTRONICS INC. and LG.  
 20 PHILIPS LCD CO., LTD.,  
 21 Defendants.  
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 23  
 24  
 25  
 26  
 27  
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Case No. CV-05-0189 CBM (JTL)  
 [Related to Case Nos. CV-02-  
 6775, CV-03-2866 CBM, CV-03-  
 2884 CBM, CV-03-2885 CBM and  
 CV-03-2886 CBM]

**CONFIDENTIALITY**  
**STIPULATION AND**  
**PROTECTIVE ORDER**

Hon. Consuelo B. Marshall

DOCKETED ON CM  
 APR 26 2006  
 BY *[Signature]* 006

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IT IS HEREBY STIPULATED by Plaintiff, CHUNGHWA PICTURE TUBES, LTD. and by Defendants, LG ELECTRONICS INC. and LG.PHILIPS LCD CO., LTD., through their respective counsel of record, that the following Confidentiality Stipulation and Protective Order ("Order") shall govern the handling of any document, information or other things exchanged by the parties or, pursuant to paragraph 16, received from third parties, in connection with all phases of the above captioned action leading up to trial, including, but not limited to, the filing of any pleadings, answering any discovery requests, taking depositions, filing motions, and preparing transcripts and exhibits. This Order does not govern proceedings during trial, nor does it prohibit any party from seeking a separate protective order to govern trial proceedings; however, this Order shall govern all testimony taken at a pretrial hearing or other judicial proceeding.

1. The parties, and any third party whose confidential information is sought through discovery by a party to the captioned action, shall make a designation of CONFIDENTIAL or CONFIDENTIAL ATTORNEYS ONLY with regard to any document or other discovery material it produces or provides, or any testimony it gives in the above captioned action, that purportedly contains, reflects, or otherwise discloses a trade secret or other confidential research, development, commercial, technical, business, financial, personnel, or customer information.

(a) Each party and all persons bound by the terms of this Order shall use any information or document governed by this Order only in connection with the prosecution or defense of the above captioned action, except by consent of all of the parties or order of the Court. With respect to information or documents produced by third parties, such information or documents will be used only in connection with the prosecution or defense of the above captioned action, except by consent of all of the parties and the third party that produced such information or documents, or order of the Court. CONFIDENTIAL and/or CONFIDENTIAL ATTORNEYS ONLY information and/or documents may be disclosed or released only to those persons entitled to receive such information and/or documents under this Order.



1 (b) Documents will be treated in accordance with their designation  
2 under this Order. However, failure of a party to designate material CONFIDENTIAL or  
3 CONFIDENTIAL ATTORNEYS ONLY shall not be deemed or construed to constitute  
4 an admission that such material is not confidential or proprietary. If a party discovers  
5 that it has inadvertently failed to properly designate material as CONFIDENTIAL or  
6 CONFIDENTIAL ATTORNEYS ONLY, such party may promptly designate the  
7 material as CONFIDENTIAL or CONFIDENTIAL ATTORNEYS ONLY as  
8 applicable. Disclosure of such confidential information to persons not authorized to  
9 receive that information prior to receipt of the confidentiality designation shall not be  
10 deemed a violation of this Order. However, in the event the document has been  
11 distributed in a manner inconsistent with the designation, a receiving party will take  
12 reasonable steps to retrieve all copies of the CONFIDENTIAL or CONFIDENTIAL  
13 ATTORNEYS ONLY documents that are inconsistently designated, or notes or extracts  
14 thereof. In the event distribution has occurred to a person not under the control of a  
15 receiving party, the receiving party shall make a request in writing for return of the  
16 document and for an undertaking of confidentiality. In the event the request is not  
17 promptly agreed to in writing, or in the event there is no response, or in the event that  
18 the receiving party deems the making of the request to be a useless act, the receiving  
19 party shall promptly notify the disclosing party of the distribution and all pertinent facts  
20 concerning it, including the identity of the person or entity not under the control of the  
21 receiving party.

22 (c) If a disclosing party inadvertently discloses information that is  
23 privileged or otherwise immune from discovery, the disclosing party shall promptly  
24 upon discovery of the disclosure so advise the receiving party in writing, provide the  
25 receiving party with satisfactory proof that the disclosure was inadvertent, and request  
26 that the item or items of information be returned, and if that request is properly made  
27 and supported, no party to the above captioned action shall thereafter assert that the  
28 disclosure waived any privilege or immunity. It is further agreed that the receiving

1 party will return or destroy the inadvertently produced item or items of information, and  
2 all copies and derivations, within five (5) days of the earliest of (a) discovery by the  
3 receiving party of the inadvertent nature of the production, or (b) the receiving party  
4 receiving a written request for the return or destruction of the information.

5 (d) Should any documents, testimony, or information designated as  
6 CONFIDENTIAL or CONFIDENTIAL ATTORNEYS ONLY be disclosed, through  
7 inadvertence by the receiving party, to any person or party not authorized under this  
8 Order, then the receiving party shall use commercially reasonable efforts to (i) promptly  
9 retrieve the disclosed documents, testimony, or information from such unauthorized  
10 person or party; (ii) bind such person or party to the terms of this Order; (iii) promptly  
11 inform such person or party of all the provisions of this Order; (iv) request such person  
12 or party to sign the "ACKNOWLEDGEMENT" in the form attached hereto; (v) identify  
13 such person or party immediately to the disclosing party that designated the documents,  
14 testimony, or information as CONFIDENTIAL or CONFIDENTIAL ATTORNEYS  
15 ONLY; and (vi) identify the CONFIDENTIAL or CONFIDENTIAL ATTORNEYS  
16 ONLY documents, testimony, or information immediately to the disclosing party that  
17 designated the documents, testimony, or information as CONFIDENTIAL or  
18 CONFIDENTIAL ATTORNEYS ONLY. The executed "ACKNOWLEDGEMENT"  
19 shall promptly be served upon the party that designated the documents, testimony, or  
20 information as CONFIDENTIAL or CONFIDENTIAL ATTORNEYS ONLY. Nothing  
21 in this paragraph shall limit the right of the party that designated the documents,  
22 testimony, or information as CONFIDENTIAL or CONFIDENTIAL ATTORNEYS  
23 ONLY to seek any appropriate sanction or remedy against the party that intentionally  
24 disclosed the documents, testimony, or information to a person or party not authorized  
25 under this Order.

26 (e) It is understood that counsel for a party may give advice and  
27 opinions to his or her client based on his or her evaluation of information designated  
28 CONFIDENTIAL and CONFIDENTIAL ATTORNEYS ONLY received by the party,



1 provided that such rendering of advice and opinions shall not reveal the content of  
2 information to which the recipient is not otherwise entitled, and also shall not reveal or  
3 disclose competitively useful information, such as, without limitation, financial  
4 information; sales information; pricing data; strategic business plans; research and  
5 development projects; circuit implementations; process flows; yield and cost  
6 information; marketing plans, forecasts and strategies; testing information; and  
7 customer-specific information, except by prior written agreement with counsel for the  
8 producing party.

9       2. Information designated as CONFIDENTIAL may be disclosed only to the  
10 following persons:

11       (a) outside attorneys representing any party in the above captioned  
12 action, and any paralegal, law clerk, or other employees working under the direct  
13 supervision of such attorneys, provided, however, that no person who is a party or a  
14 director, officer, managing agent or other employee of a party may be retained as a  
15 paralegal, stenographic or clerical employee within the meaning of this paragraph;

16       (b) (i) experts, including consultants and investigators, retained by  
17 any party or counsel to any party to assist in the above captioned action or to testify at  
18 trial in that action, but only to the extent necessary to perform such work, and provided  
19 that such experts shall not be past or present employees of a party and that paragraphs  
20 2(b)(ii) and (iii) are complied with;

21       (ii) For each expert to whom any party desires to disclose  
22 CONFIDENTIAL and/or CONFIDENTIAL ATTORNEYS ONLY information and/or  
23 documents, such party must first identify in writing to the attorneys for the producing  
24 party the following information: the expert's full name; professional address;  
25 educational background; general areas of expertise; all present employment and  
26 consultancies; all prior employment and consultancies within the last four years; all  
27 present or prior relationships between the expert and the receiving party, its subsidiaries,  
28 its affiliates, or other related entities; and a list of all cases in which the expert or

1 consultant has testified at a deposition or in court within the last four years. An expert's  
2 disclosure of confidential employment and consultancies may be designated as  
3 CONFIDENTIAL ATTORNEYS ONLY.

4 (iii) Counsel for the producing party shall have ten (10) business  
5 days from receipt of such Paragraph 2(b)(ii) notice to object to disclosure of such  
6 CONFIDENTIAL and/or CONFIDENTIAL ATTORNEYS ONLY information and/or  
7 documents to such expert. Any and all such objections must be made in writing with all  
8 such grounds stated with specificity. The parties shall attempt to resolve such  
9 objections informally. In the event of such an objection, no disclosure of  
10 CONFIDENTIAL and/or CONFIDENTIAL ATTORNEYS ONLY documents,  
11 testimony or information shall be made to such persons for a period of five (5) court  
12 days following the date the objection is received to permit the objecting party to move,  
13 by noticed motion or by ex parte application, for an order that disclosure not be made to  
14 such expert or consultant or that the disclosure be made only upon certain conditions.  
15 Provided that the Paragraph 2(b)(ii) notice is fully responsive to all of the requirements  
16 set forth in that same paragraph, the moving party shall have the burden of establishing  
17 that good cause exists for such an order, and shall seek to have the matter heard at the  
18 earliest possible date. If no motion is noticed within five (5) court days following  
19 receipt of the objection, CONFIDENTIAL and/or CONFIDENTIAL ATTORNEYS  
20 ONLY documents, testimony, and information may be disclosed to such experts or  
21 consultants for the purposes of and upon the conditions stated in this Protective Order.  
22 If such motion is made, there shall be no disclosure to such expert or consultant until the  
23 Court has ruled upon the motion, and then only in accordance with the ruling so made.  
24 The filing and pendency of such motion shall not limit, delay, or defer any disclosure of  
25 the CONFIDENTIAL and/or CONFIDENTIAL ATTORNEYS ONLY documents,  
26 testimony and information to persons as to whom no such objection has been made, nor  
27 shall it delay or defer any other pending discovery unless the motion and the inability to  
28 disclose such documents, testimony, and information bear directly on the non-objecting

1 party's ability to conduct such discovery. The right of a party to object shall be waived  
2 if no objection is received by the party disclosing the expert or consultant within ten  
3 (10) business days of receipt of said disclosure except to the extent that the non-  
4 designating party later discovers that the original disclosure of a particular expert was in  
5 error or otherwise not fully responsive to Paragraph 2(b)(ii) above.

6 (c) personnel of third party vendors, whose regular business is providing  
7 litigation support services, engaged by a party or by counsel for a party to assist counsel  
8 in (i) the coding, imaging or other management of documents produced in discovery in  
9 the above captioned action or of associated databases; (ii) the preparation of  
10 demonstrative exhibits or other visual aids for presentation at a hearing or trial; (iii) jury  
11 research and analysis, including mock jurors; (iv) translation; or (v) outside  
12 photocopying or scanning services, provided that such personnel of third party vendors  
13 shall not be employees of a party or otherwise working for or on behalf of a party in  
14 connection with that party's business;

15 (d) any party, including directors, officers, managing agents and other  
16 employees assisting with the preparation of this case for trial; and

17 (e) the Court and its personnel and court reporters and videographers.

18 3. Any CONFIDENTIAL material that a party or third party believes in good  
19 faith to be highly sensitive or highly confidential and should not be disclosed to  
20 another party or parties, or to directors, officers, managing agents or other employees  
21 of such other party or parties, may be designated CONFIDENTIAL ATTORNEYS  
22 ONLY.

23 4. Information designated as CONFIDENTIAL ATTORNEYS ONLY may  
24 be disclosed only to the following persons:

25 (a) outside attorneys representing any party in the above captioned  
26 action, and any paralegal, law clerk, or other employees working under the direct  
27 supervision of such attorneys, provided, however, that no person who is a party or a  
28

SCANNED

1 director, officer, managing agent or other employee of a party may be retained as a  
2 paralegal, stenographic or clerical employee within the meaning of this paragraph;

3 (b) experts, including consultants and investigators, retained by any  
4 party or counsel to any party to assist in the above captioned action or to testify at trial  
5 in that action, but only to the extent necessary to perform such work, and provided that  
6 such experts shall not be present or past employees of a party and that paragraphs  
7 2(b)(ii) and (iii) are complied with;

8 (c) personnel of third party vendors, whose regular business is providing  
9 litigation support services, engaged by a party or by counsel for a party to assist counsel  
10 in (i) the coding, imaging or other management of documents produced in discovery in  
11 the above captioned action or of associated databases; (ii) in the preparation of  
12 demonstrative exhibits or other visual aids for presentation at a hearing or trial; (iii) jury  
13 research and analysis; (iv) translation; or (v) outside photocopying or scanning services,  
14 provided that such personnel of third party vendors shall not be employees of a party or  
15 otherwise working for or on behalf of a party in connection with that party's business;  
16 and

17 (d) the Court and its personnel and court reporters and videographers.

18 5. The persons described in paragraphs 2(b), 2(d), 4(b), or 4(c), and mock  
19 jurors under paragraph 2(c), shall be allowed access to the CONFIDENTIAL or  
20 CONFIDENTIAL ATTORNEYS ONLY material, as appropriate, only after they have  
21 read this Order and signed a copy of the attached "ACKNOWLEDGEMENT." As  
22 limited exceptions to the foregoing, the persons identified in paragraph 4(c) need not  
23 sign Acknowledgements if they are employed by a vendor who has signed an  
24 Acknowledgement that governs their receipt and use of the CONFIDENTIAL or  
25 CONFIDENTIAL ATTORNEYS ONLY information, and paralegals, law clerks, and  
26 other employees identified in paragraph 4(a) need not sign Acknowledgements if they  
27 are supervised by an attorney who has signed an Acknowledgement. The undersigned  
28 counsel shall forward copies of all executed ACKNOWLEDGEMENTS to the all other

1 parties, and shall also maintain a list, available for inspection by the Court, of persons  
2 to whom CONFIDENTIAL or CONFIDENTIAL ATTORNEYS ONLY material is  
3 disclosed. The persons receiving CONFIDENTIAL or CONFIDENTIAL  
4 ATTORNEYS ONLY material are enjoined from disclosing it to any other person,  
5 except as permitted by this Order, and are further enjoined from using such material for  
6 any purpose other than the prosecution or defense of the above captioned action.

7 6. The persons under Paragraphs 4(b) and 4(c) receiving CONFIDENTIAL  
8 ATTORNEYS ONLY material shall be precluded from consulting or working for any  
9 party to the above captioned action as a participant in any competitive decision-making  
10 processes, including without limitation, in the areas of sales and marketing, product  
11 pricing, strategic planning, research and development, product development, or  
12 manufacturing of products related to the subject matter of the patents-in-suit. This  
13 competitive decision-making preclusion shall be effective from the time the  
14 CONFIDENTIAL or CONFIDENTIAL ATTORNEYS ONLY information is received  
15 and shall last for a period of one (1) year after the conclusion of their participation in  
16 the above captioned action.

17 7. Each individual who receives any CONFIDENTIAL or CONFIDENTIAL  
18 ATTORNEYS ONLY material agrees to subject himself or herself to the jurisdiction  
19 of this Court for the purpose of any proceedings relating to performance under,  
20 compliance with, or violation of this Order.

21 8. The recipient of any CONFIDENTIAL or CONFIDENTIAL  
22 ATTORNEYS ONLY material shall maintain such information in a secure and safe  
23 area accessible only to persons eligible to review such CONFIDENTIAL or  
24 CONFIDENTIAL ATTORNEYS ONLY material.

25 9. If a party discloses CONFIDENTIAL and/or CONFIDENTIAL  
26 ATTORNEYS ONLY information and/or documents in another document, at a  
27 deposition, or at a hearing, such party shall designate, and treat, at least such portion of  
28 such other document or resulting transcript as CONFIDENTIAL and/or



1 CONFIDENTIAL ATTORNEYS ONLY as applicable. Parties, third parties agreeing  
2 to be bound by this Order, and their counsel shall designate CONFIDENTIAL or  
3 CONFIDENTIAL ATTORNEYS ONLY material as follows:

4 (a) In the case of documents that are produced as part of discovery or  
5 are responsive to any discovery request, which includes, but is not limited to, responses  
6 to interrogatories, document production requests, and requests for admission and any  
7 attachments or exhibits to any of the foregoing documents referenced in this provision,  
8 such documents shall be stamped or otherwise labeled: CONFIDENTIAL or  
9 CONFIDENTIAL ATTORNEYS ONLY.

10 (b) In the case of depositions, counsel may designate portions of the  
11 transcript (including exhibits) as CONFIDENTIAL or CONFIDENTIAL ATTORNEYS  
12 ONLY during the deposition by making a statement to that effect on the record.  
13 Alternatively, within thirty (30) calendar days after receipt of any written deposition  
14 transcript, counsel for a party or third party whose CONFIDENTIAL or  
15 CONFIDENTIAL ATTORNEYS ONLY material was disclosed during the deposition  
16 may so designate the appropriate pages of the transcript (including exhibits) and serve  
17 notice of the designation on opposing counsel. For thirty (30) calendar days after  
18 receipt of any written deposition transcript, the deposition transcript, including exhibits,  
19 shall be deemed CONFIDENTIAL ATTORNEYS ONLY. Where the entire deposition,  
20 as opposed to discreet portions of the deposition testimony, is designated  
21 CONFIDENTIAL or CONFIDENTIAL ATTORNEYS ONLY on the record at the  
22 deposition, counsel shall confirm in writing within thirty (30) days after the receipt of  
23 the deposition transcript those portions of the transcript that are CONFIDENTIAL or  
24 CONFIDENTIAL ATTORNEYS ONLY.

25 10. During any deposition taken in the above captioned action at which  
26 CONFIDENTIAL or CONFIDENTIAL ATTORNEYS ONLY information and/or  
27 documents are disclosed or discussed, any party may exclude from attendance at the  
28 deposition during such disclosure or discussion any person other than the deponent,

HOWREY LLP



1 counsel for the deponent (as long as that counsel is otherwise authorized under the  
2 terms of this protective order to have access to the CONFIDENTIAL or  
3 CONFIDENTIAL ATTORNEYS ONLY information and/or documents), court  
4 reporter, videographer, and persons to whom the information and/or documents may be  
5 disclosed under Paragraphs 2 and 3.

6 11. A party or third party shall not be obligated to challenge the propriety of a  
7 CONFIDENTIAL or CONFIDENTIAL ATTORNEYS ONLY designation at the time  
8 made, and failure to do so shall not preclude a subsequent challenge. If at any time any  
9 party disagrees with a designation of CONFIDENTIAL or CONFIDENTIAL  
10 ATTORNEYS ONLY, that party shall provide written notice of its disagreement to the  
11 producing party or third party, including its basis for disagreeing with the designation.  
12 The disclosing party shall then have a reasonable period, not exceeding fourteen (14)  
13 days, from the date of receipt of such notice to: (a) advise the receiving party whether  
14 the disclosing party maintains its designation; and (b) if so, provide its basis for the  
15 particular designation. The parties or third parties shall first try to resolve the dispute  
16 on an informal basis. If the dispute cannot be informally resolved, the party or third  
17 party challenging the designation may, after advising the disclosing party, request  
18 appropriate relief from the Court.

19 12. All applications and motions to the Court in which a party submits  
20 CONFIDENTIAL or CONFIDENTIAL ATTORNEYS ONLY material shall comply  
21 with Local Rule 79-5.1.

22 13. In the event that any party seeks to use CONFIDENTIAL or  
23 CONFIDENTIAL ATTORNEYS ONLY material in any pretrial motion or supporting  
24 motion papers or opposition to a motion or related motion papers or during a pre-trial  
25 hearing in connection with the above captioned action, that party shall notify the  
26 designating party or third party of such intended use no less than three (3) business  
27 days in advance of such intended use. Use of CONFIDENTIAL or CONFIDENTIAL  
28 ATTORNEYS ONLY material in any pretrial proceeding shall not result in loss of its

1 CONFIDENTIAL or CONFIDENTIAL ATTORNEYS ONLY status through such use,  
2 and the parties shall take all steps reasonably required to protect its confidentiality  
3 during such use. Such efforts include, but are not limited to, undertaking to disclose  
4 the least amount of designated content as is reasonably necessary for the pretrial  
5 proceeding, and may include redacting or excerpting portions of designated discovery  
6 material as appropriate. Disclosure and use of CONFIDENTIAL and  
7 CONFIDENTIAL ATTORNEYS ONLY material at trial and in subsequent  
8 proceedings shall be governed by the terms of an order to be entered by the Court.

9 14. Nothing in this Order shall preclude a party or its attorneys from:

10 (a) showing a document designated as CONFIDENTIAL or  
11 CONFIDENTIAL ATTORNEYS ONLY to an individual identified by the document or  
12 by sworn testimony as having been previously prepared, received, or reviewed by that  
13 individual;

14 (b) showing a document produced in discovery by an opposing party to  
15 a current or former director, officer, managing agent or employee of the producing party  
16 or of any related entities of the producing party during the questioning of such person in  
17 a deposition, hearing, or trial in the above captioned action; or

18 (c) disclosing or using for any purpose any information or documents  
19 from the party's own files which the party itself has designated as CONFIDENTIAL or  
20 CONFIDENTIAL ATTORNEYS ONLY.

21 15. Counsel for a party producing documents may mask ("redact") material  
22 deemed exempt from discovery because it is protected from disclosure under the  
23 attorney-client privilege or work product doctrine. Any and all documents from which  
24 material is redacted shall identify in all redacted areas that a redaction has occurred. In  
25 addition, the reason for any and all such redactions shall be stated either on the  
26 documents themselves or on a log to be provided within thirty (30) days after the  
27 production of the documents. Sufficient information regarding the masked material  
28 must be provided to the other party to enable it to evaluate the legitimacy of the

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1 asserted privilege or immunity, and such redactions shall be included on the redacting  
2 party's privilege log. The parties reserve the right to pursue categories for redaction in  
3 addition to those identified above, by either consent of the parties or order of the Court,  
4 to be addressed on a case-by case basis. All disputes arising out of a party's objection  
5 to another party's redaction of material under this paragraph shall be resolved pursuant  
6 to Fed. R. Civ. P. 37, Local Rule 37-1 through 37-4.

7 3. Third parties may produce documents and/or other things and may  
8 disclose information pursuant to the terms of this Order. Such third parties shall be  
9 entitled to the remedies and relief provided by this Order.

10 4. Any court reporter or videographer who records testimony in the above  
11 captioned action at a deposition shall be provided with a copy of this Protective Order  
12 by the party noticing the deposition. That party shall advise the court reporter or  
13 videographer, before any testimony is taken, that all confidentially designated  
14 documents, information, or testimony is and shall remain confidential and shall not be  
15 disclosed except as provided in this Protective Order. The noticing party shall further  
16 advise the court reporter and videographer that copies of all transcripts, reporting notes,  
17 and all other records of any such testimony must be treated in accordance with this  
18 Protective Order, delivered to attorneys of record, or filed under seal with the Court.

19 5. In the event any person or receiving party having possession, custody, or  
20 control of any document, testimony, or information produced in the above captioned  
21 action and designated as CONFIDENTIAL or CONFIDENTIAL ATTORNEYS  
22 ONLY by a disclosing party receives a subpoena or other process or order to produce  
23 such information, such subpoenaed person or entity shall notify by mail the attorneys  
24 of record of the disclosing party claiming such confidential treatment of the document  
25 sought by such subpoena or other process or order, shall furnish those attorneys with a  
26 copy of said subpoena or other process or order, and shall cooperate with respect to any  
27 reasonable procedure sought to be pursued by the party whose interest may be affected.  
28 The disclosing party asserting the confidential treatment shall have the burden of

1 defending against such subpoena, process or order. The person or party receiving the  
2 subpoena or other process, or order shall be entitled to comply with it except to the  
3 extent the disclosing party asserting the confidential treatment is successful in  
4 obtaining an order modifying or quashing it.

5 6. If the discovery process calls for the production of information that a party  
6 does not wish to produce because the party believes its disclosure would breach an  
7 express or implied agreement with a non-party to maintain such information in  
8 confidence, the disclosing party shall give written notice to the non-party that its  
9 information is subject to discovery in the above captioned action, and shall provide the  
10 non-party with a copy of this Protective Order. When such written notice is given to  
11 the non-party, the disclosing party will advise the potential receiving party that such  
12 notice has been given. The non-party shall have fourteen (14) days from receipt of the  
13 written notice in which to seek relief from the Court, if the non-party so desires. If the  
14 fourteen (14) days elapse without relief being sought from the Court, the requested  
15 information shall be produced in accordance with the terms of this Protective Order.

16 7. Unless otherwise agreed to by the parties or by order of the Court, within  
17 sixty (60) days of the final resolution of all of the above captioned action and of any  
18 and all appeals of such action, all CONFIDENTIAL and CONFIDENTIAL  
19 ATTORNEYS ONLY material, and all copies thereof, shall be (1) upon request,  
20 returned to the party that produced it, or (2) destroyed. Notwithstanding the foregoing,  
21 counsel of record for the parties shall be permitted to retain a file copy of materials  
22 created during the course of the above captioned action, or made part of the record, or  
23 which have been filed under seal with the Clerk of the Court, including but not limited  
24 to any motion, brief, affidavit, expert report, discovery response, and/or memoranda  
25 which contains CONFIDENTIAL or CONFIDENTIAL ATTORNEYS ONLY material  
26 within the document or as an exhibit thereto, and a copy of all depositions, including  
27 exhibits, and deposition evaluations. Such file copies must be maintained under the  
28 conditions of CONFIDENTIAL or CONFIDENTIAL ATTORNEYS ONLY

SCANNED

1 documents as provided in this Order. Counsel of record for the parties shall certify in  
2 writing that they have complied with this paragraph.

3 8. This Order is not intended to address discovery objections to produce,  
4 answer, or respond on the grounds of attorney-client privilege or work product  
5 immunity, or to preclude either party from seeking further relief or protective orders  
6 from the Court as may be appropriate under the Federal Rules of Civil Procedure.

7 9. Except as specifically provided herein, the terms, conditions, and  
8 limitations of this Order shall survive the termination of the above captioned action.

9 10. This Order is without prejudice to the right of any party or third party to  
10 seek relief from the Court, upon good cause shown, from any of the provisions hereof.

11 (signature blocks on following page)

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14  
15  
16 IT IS SO ORDERED


17 Dated 4/24/06

18   
19 United States District Judge

SCANNED

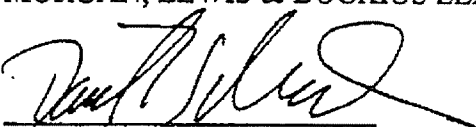
1 Dated: March 20, 2006

2  
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IT IS SO ORDERED.

Dated:   
U.S. District Court Judge

HOWREY LLP

DM-8322342



ACKNOWLEDGEMENT

I, \_\_\_\_\_, declare:

1. I reside at \_\_\_\_\_ [Street Address]  
\_\_\_\_\_ [City, State, Zip Code].
2. I am employed at \_\_\_\_\_ [Employer]  
located at \_\_\_\_\_ [Street Address]  
\_\_\_\_\_ [City, State, Zip Code]  
as \_\_\_\_\_ [Position or Title].

3. I have read and understand the provisions of the Amended Confidentiality Stipulation and Protective Order ("Protective Order") entered in the U.S. District Court for the Central District of California ("the Court") with respect to the non-disclosure of CONFIDENTIAL and CONFIDENTIAL ATTORNEYS ONLY information and/or documents, and I agree to abide by and be bound by its terms. Specifically, and without limitation upon such terms, I agree not to use or disclose any confidential information made available to me other than in accordance with the Protective Order.

4. I hereby submit to the jurisdiction of the Court for the limited purpose of enforcing the Protective Order, and this Acknowledgement, by contempt proceedings or other appropriate judicial remedies.

5. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that this Acknowledgement was executed this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_.

By: \_\_\_\_\_

SCANNED

**PROOF OF SERVICE**

STATE OF CALIFORNIA )

COUNTY OF SAN FRANCISCO ) ss.:

I am employed in the County of San Francisco, State of California. I am over the age of 18 and not a party to the within action. My business address is 525 Market Street, Suite 3600, San Francisco, California 94105.

On March 20, 2006, I served on the interested parties in said action the within:

**CONFIDENTIALITY STIPULATION AND PROTECTIVE ORDER**

by placing a true copy thereof in a sealed envelope(s) addressed as stated below.

Andrea Sheridan Ordin  
David L. Schrader  
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☒ (U.S. MAIL and ELECTRONIC MAIL) I am readily familiar with this firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. postal service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than 1 day after date of deposit for mailing in affidavit.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on March 20, 2006 at San Francisco, California.

Jessika Fabian  
(Type or print name)

  
(Signature)

HOWREY LLP

DM-8322342

### CERTIFICATE OF SERVICE

The undersigned counsel certifies that, on May 10, 2006, he electronically filed the foregoing document with the Clerk of the Court using CM/ECF, which will send automatic notification of the filing to the following:

Robert W. Whetzel, Esq.  
Matthew W. King, Esq.  
Richards, Layton & Finger  
One Rodney Square  
P.O. Box 551  
Wilmington, DE 19899

The undersigned counsel further certifies that copies of the foregoing document were sent on May 10, 2006 by email and by hand to the above counsel and by email and first class mail to the following non-registered participants:

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San Francisco, CA 94105

/s/ Richard D. Kirk (rk0922)  
Richard D. Kirk